

PATENT APPLICATION
IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Appellant: Donald F. Gordon, et al.	Case: SEDN/070CIP4
Serial No.: 09/585,263	Filed: June 2, 2000
Examiner: Dominic D. Saltarelli	Group Art Unit: 2623
Confirmation No: 5643	
Title: CHANNEL INFORMATION WINDOW VIA SERVER-CENTRIC INTERACTIVE USER INTERFACE	

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Commissioner for Patents
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SIR:

APPEAL BRIEF

Appellant submits this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 2623 dated September 21, 2006 finally rejecting claims 1, 2, 5, 7-10, 13 and 14.

In the event that an extension of time is required for this appeal brief to be considered timely, and a petition therefor does not otherwise accompany this appeal brief, any necessary extension of time is hereby petitioned for.

The Commissioner is authorized to charge the Appeal Brief fee (\$250) and any other fees due to make this filing timely and complete (including extension of time fees) to Deposit Account No. 20-0782/SEDN/070CIP4.

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Real Party in Interest

The real party in interest is SEDNA PATENT SERVICES, LLC.

Related Appeals and Interferences

Appellant asserts that no appeals or interferences are known to Appellant, Appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1, 2, 5, 7-10, 13 and 14 are pending in the application. Claims 1-8 were originally presented in the application. Claims 9-14 were added by amendment. Claims 1, 5, 7-10, and 13-14 have been amended, and claims 3-4, 6, and 11-12 been canceled without prejudice. Claims 1, 2, 5, 7-10, 13 and 14 stand finally rejected as discussed below. The final rejection of claims 1, 2, 5, 7-10, 13 and 14 is appealed.

Status of Amendments

All claim amendments have been entered.

Summary of Claimed Subject Matter

Embodiments of the present invention generally are directed to a method for generating a “channel information” or “spotlight” window for an interactive program guide. (See Appellants’ specification, p. 2, ll. 26-31.) In an exemplary embodiment, a bit map for the spotlight window may be encoded and continuously broadcast from a server, for example, at a headend, to terminals. (See *Id.*) Upon receiving a signal from a remote control to bring up the channel information window, the terminal overlays the appropriate window over currently broadcast video. (See *Id.*)

For the convenience of the Board of Patent Appeals and Interferences, Appellant’s independent claims 1, , 5, 9 and 10 are presented below in claim format with elements read on the various figures of the drawings and appropriate citations to at least one portion of the specification for each element of the appealed claims.

Claim 1 positively recites (with reference numerals, where applicable and cites to at least one portion of the specification added):

1. (Previously presented) A method, comprising:
 - generating, at a headend (102), at least one bitmap for a channel information window (1704) (p. 32, ll. 4-6; FIG. 17);
 - encoding, at the headend (102), a broadcast video presentation and the bitmap for the channel information window (1704), the broadcast video presentation (1702) being programming from one of a plurality of channels (p. 32, ll. 9-12; FIG. 1);
 - transmitting, from the headend (102) to a set top terminal (106), the broadcast video presentation (1702) and the bitmap for the channel information window (1704) (p. 32, ll. 9-12; FIG. 1);
 - receiving, at the set top terminal, a signal to activate the channel information window (1704) (p. 32, ll. 25-27);
 - decoding, at the set top terminal (106), the broadcast video presentation (1702) and the bitmap for the channel information window (1704) (p. 32, ll. 14-16); and

compositing, at the set top terminal (106), the bitmap for the channel information window (1704) and the broadcast video presentation (1702) to produce a video stream for a display so that the channel information window (1704) overlays and obscures at least a portion of the broadcast video presentation (1702) on the display (p. 32, ll. 28-29).

Claim 5 positively recites (with reference numerals, where applicable and cites to at least one portion of the specification added):

5. (Previously presented) A method, comprising:

generating, at a headend (102), a plurality of bitmaps for each of a plurality of channel information windows (1704) (p. 32, ll. 4-6; FIG. 17);

encoding, at the headend (102), a plurality of broadcast video displays and the channel information windows (1704), the broadcast video displays including a particular broadcast video display (1702), each broadcast video display (1702) being programming from one of a plurality of channels, the channel information windows (1704) including information about the channels (p. 32, ll. 9-12; FIG. 1);

transmitting, from the headend (102) to the set top terminal (106), the broadcast video displays (1702) and the channel information windows (1704) (p. 32, ll. 9-12; FIG. 1);

decoding, at the set top terminal (106), the broadcast video displays (1702) and the channel information windows (1704) (p. 32, ll. 14-16);

compositing, at the set top terminal (106), the particular broadcast video display (1702) and an associated one of the channel information windows (1704) to produce a video stream for a display so that the channel information window (1704) overlays and obscures at least a portion of the particular broadcast video display (1702) (p. 32, ll. 28-29); and

changing, at the set top terminal (106), the channel information window (1704) in response to a navigation command, while the particular broadcast video display (1702) remains the same (p. 35, ll. 1-3).

Claim 9 positively recites (with reference numerals, where applicable and cites to at least one portion of the specification added):

9. (Previously presented) A method, comprising:
 - generating, at a headend (102), a broadcast video presentation (1702) and at least one bitmap for a channel information window (1704), the broadcast video presentation (1702) being programming from one of a plurality of channels (p. 32, ll. 4-6; FIG. 17);
 - encoding, at the headend (102), the broadcast video presentation (1702) and the bitmap for the channel information window (p. 32, ll. 9-12; FIG. 1);
 - transmitting, from the headend (102) to a terminal (106), the broadcast video presentation (1702) and the channel information window (p. 32, ll. 9-12; FIG. 1); and
 - sending, from the terminal (106) to the headend (102), a signal to activate the channel information window (p. 32, ll. 25-27);
- wherein the bitmap for the channel information window is overlaid over the broadcast video presentation (1702) so that the channel information window obscures at least a portion of the broadcast video presentation (1702) (p. 32, ll. 28-29).

Claim 10 positively recites (with reference numerals, where applicable and cites to at least one portion of the specification added):

10. (Previously presented) A method, comprising:
 - receiving, at a terminal (106) from a headend (102), a broadcast video presentation (1702), the broadcast video presentation (1702) being programming from one of a plurality of channels (p. 32, ll. 4-6; FIG. 17);

sending, to the headend (102) from the terminal (106), a signal to activate a channel information window (1704) (p. 32, ll. 25-27);

receiving, at the terminal (106) from the headend (102), a bitmap for the channel information window (1704) (p. 32, ll. 9-12; FIG. 1);

decoding, at the terminal (106), the broadcast video presentation (1702) and the channel information window (1704) (p. 32, ll. 14-16); and

compositing, at the terminal (106), the bitmap for the channel information window (1704) with the broadcast video presentation (1702) to produce a video stream for display so that the channel information window (1704) overlays and obscures at least a portion of the broadcast video presentation (1702) in the video stream (p. 32, ll. 28-29).

Grounds of Rejection to be Reviewed on Appeal

Claims 1, 2, 5 and 8 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,986,650 to Ellis et al. ("Ellis").

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of U.S. Patent No. 5,485,197 to Hoarty ("Hoarty").

Claims 9, 10 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of U.S. Patent No. 5,793,364 to Bolanos (Bolanos).

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of MacInnis U.S. Patent No. 5,951,639 ("MacInnis").

ARGUMENTS

Rejection of Claims 1, 2, 5 and 8 under 35 U.S.C. §102(e)

Claims 1, 2, 5 and 8 are rejected under 35 U.S.C. §102(e) as being anticipated by Ellis. Appeal of this rejection is requested.

According to MPEP §2131, to anticipate a claim under §102, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 1 recites, *inter alia*,

A method, comprising:

generating, at a headend, at least one bitmap for a channel information window;

encoding, at the headend, a broadcast video presentation and the bitmap for the channel information window, the broadcast video presentation being programming from one of a plurality of channels;

transmitting, from the headend to a set top terminal, the broadcast video presentation and the bitmap for the channel information window;

receiving, at the set top terminal, a signal to activate the channel information window;

decoding, at the set top terminal, the broadcast video presentation and the bitmap for the channel information window;
and

compositing, at the set top terminal, the bitmap for the channel information window and the broadcast video presentation to produce a video stream for a display so that the channel information window overlays and obscures at least a portion of the broadcast video presentation on the display. (Emphasis added).

The present invention generates such a window at a server in a cable headend or other distribution center. Because the window is generated at a server in accordance with the present invention, rather than at a terminal, the terminal may be simplified and made less expensive. Thus, the window is remotely generated and then transmitted to the set top terminal. This feature is not taught or suggested by the references.

Ellis fails to teach each and every element of the claimed invention. For example, Ellis fails to teach encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows.

The Appellants respectfully submit that the Examiner has interpreted Ellis too broadly. The Examiner asserts because Ellis teaches that the stored bit maps are downloadable data that the stored bit maps are, therefore, generated and encoded at the headend. (See Final Office Action, p. 2.) Ellis fails to support the Examiner's assertion. Ellis specifically teaches that the data stream from the data provider only contains program schedule information. (See Ellis, col. 4, ll. 55-67, See also col. 5, ll. 11-13 "[t]he transmitted program schedule data or application software is received by the receiver 12 on signal input line 11", emphasis added.)

Nowhere, does Ellis teach, or even suggest, that the bitmap is generated and encoded at the headend. Simply because data is downloadable, does not necessarily mean the data comes from the head-end. For example, a technician may "download" the bitmap into the DRAM 18 when programming the hardware taught by Ellis. (See Ellis, col. 5, ll. 45-51.)

Furthermore, even if the Examiner's unduly broad interpretation of "downloadable data types such as stored bit maps" is correct, Ellis still fails to

support the Examiner's assertion that the bitmap is encoded at the head end. Clearly, Ellis teaches that Fig. 1 represents system components located in a user's set top cable converter box. (See Ellis, col. 4, ll. 46-54, emphasis added.) Ellis proceeds to teach that the bit map data and program schedule information are supplied to video display generator and converted to an RGB format in accordance with the bit map for display to the user. (See Ellis, col. 6, ll. 28-44.) The video display generator performing the encoding is located in the user's set top cable converter box. (See Ellis, Fig. 1.) Therefore, Ellis clearly teaches that the user's set top cable converter box is encoding the bitmap and program schedule information. The Appellants' invention is server-centric, where in stark contrast, the teachings of Ellis are set top terminal-centric.

Moreover, the Examiner asserts that "the data must be encoded into the broadcast stream". (See Advisory Action, p. 2, ll. 16-18.) The Examiner appears to be making an inherency argument. The Appellants respectfully submit that the data does not necessarily require to be encoded into the broadcast stream because Ellis teaches the transmission of analog signals. For example, Ellis teaches that data may modulated and transmitted at a frequency of 75 MHz or embedding the data in the vertical blanking interval of a program broadcast signal. (See Ellis, col. 5, ll. 1-10.) These types of transmission techniques are known to be techniques for transmitting analog data signals. Consequently, analog data may be modulated to be entered into a transmission, but do not need to be encoded, as taught by the Appellants' invention. As such, the Appellants respectfully submit that the Examiner's interpretation and assertion cannot be reasonably supported by Ellis.

Accordingly, independent claim 1 and independent claim 5, which recites relevant limitations similar to those recited in independent claim 1, are not anticipated and are patentable over Ellis under 35 U.S.C. §102. For at least the same reasons discussed above, claims 2 and 8 which depend respectively from claims 1 and 5 also are not anticipated and are patentable over Ellis under 35 U.S.C. §102. Therefore, this rejection should be withdrawn.

Rejection of Claim 7 Under 35 U.S.C. §103(a)

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of Hoarty. Appeal of this rejection is requested.

Claim 7 depends directly from independent claim 5 and recites additional limitations thereof. For at least the reasons discussed above, Ellis does not teach or suggest Appellants' invention as a whole, as recited in independent claim 5.

Hoarty fails to bridge the substantial gap left by Ellis. Hoarty only teaches a carousel display. (See Hoarty, Abstract.) However, Hoarty also fails to teach or suggest at least the limitations of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows. Accordingly, any attempted combination of Ellis and Hoarty, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because they all lack at least the limitation of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows. As such, Appellants submit that dependent claim 7 is also not obvious and is patentable under 35 U.S.C. §103.

Therefore, Appellants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection of Claims 9, 10 and 13 Under 35 U.S.C. §103(a)

Claims 9, 10 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of Bolanos. Appeal of this rejection is requested.

Claim 9 recites, *inter alia*,

A method, comprising:

generating, at a headend, a broadcast video presentation and at least one bitmap for a channel information window, the broadcast video presentation being programming from one of a plurality of channels;
encoding, at the headend, the broadcast video presentation and the bitmap for the channel information window;
transmitting, from the headend to a terminal, the broadcast video presentation and the channel information window; and
sending, from the terminal to the headend, a signal to activate the channel information window;
wherein the bitmap for the channel information window is overlaid over the broadcast video presentation so that the channel information window obscures at least a portion of the broadcast video presentation.
(Emphasis added).

The present invention generates such a window at a server in a cable headend or other distribution center. Because the window is generated at a server in accordance with the present invention, rather than at a terminal, the terminal may be simplified and made less expensive. Thus, the window is remotely generated and then transmitted to the set top terminal. This feature is not taught or suggested by the references.

Ellis fails to teach each and every element of the claimed invention. For example, Ellis fails to teach encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows.

The Appellants respectfully submit that the Examiner has interpreted Ellis too broadly. The Examiner asserts because Ellis teaches that the stored bit maps are downloadable data that the stored bit maps are, therefore, generated and encoded at the headend. (See Final Office Action, p. 2.) Ellis fails to support the Examiner's assertion. Ellis specifically teaches that the data stream from the data provider only contains program schedule information. (See Ellis, col. 4, ll. 55-67, See also col. 5, ll. 11-13 "[t]he transmitted program schedule data or application software is received by the receiver 12 on signal input line 11", emphasis added.)

Nowhere, does Ellis teach, or even suggest, that the bitmap is generated and encoded at the headend. Simply because data is downloadable, does not necessarily mean the data comes from the head-end. For example, a technician may “download” the bitmap into the DRAM 18 when programming the hardware taught by Ellis. (See Ellis, col. 5, ll. 45-51.)

Furthermore, even if the Examiner’s unduly broad interpretation of “downloadable data types such as stored bit maps” is correct, Ellis still fails to support the Examiner’s assertion that the bitmap is encoded at the head end. Clearly, Ellis teaches that Fig. 1 represents system components located in a user’s set top cable converter box. (See Ellis, col. 4, ll. 46-54, emphasis added.) Ellis proceeds to teach that the bit map data and program schedule information are supplied to video display generator and converted to an RGB format in accordance with the bit map for display to the user. (See Ellis, col. 6, ll. 28-44.) The video display generator performing the encoding is located in the user’s set top cable converter box. (See Ellis, Fig. 1.) Therefore, Ellis clearly teaches that the user’s set top cable converter box is encoding the bitmap and program schedule information. The Appellants’ invention is server-centric, where in stark contrast, the teachings of Ellis are set top terminal-centric.

Moreover, the Examiner asserts that “the data must be encoded into the broadcast stream”. (See Advisory Action, p. 2, ll. 16-18.) The Examiner appears to be making an inherency argument. The Appellants respectfully submit that the data does not necessarily require to be encoded into the broadcast stream because Ellis teaches the transmission of analog signals. For example, Ellis teaches that data may modulated and transmitted at a frequency of 75 MHz or embedding the data in the vertical blanking interval of a program broadcast signal. (See Ellis, col. 5, ll. 1-10.) These types of transmission techniques are known to be techniques for transmitting analog data signals. Consequently, analog data may be modulated to be entered into a transmission, but do not need to be encoded, as taught by the Appellants’ invention. As such, the Appellants respectfully submit that the Examiner’s interpretation and assertion cannot be reasonably supported by Ellis.

Moreover, Bolanos fails to bridge the substantial gap left by Ellis. Bolanos only teaches a method and system for associating playback of multiple audiovisual programs with one graphic interface element. (See Bolanos, Abstract.) However, Bolanos also fails to teach or suggest at least the limitations of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows. Accordingly, any attempted combination of Ellis and Bolanos would still result in a gap in the combined teachings in regards to the independent claim 9 because they all lack at least the limitation of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows.

Accordingly, independent claim 9 and independent claim 10, which recite relevant limitations similar to those recited in independent claim 1, are not obvious over Ellis in view of Bolanos under 35 U.S.C. §103. For at least the same reasons discussed above, claim 13 which depends from claim 1 also is not obvious and is patentable over Ellis in view of Bolanos under 35 U.S.C. §103. Therefore, this rejection should be withdrawn.

Rejection of Claim 14 Under 35 U.S.C. §103(a)

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of MacInnis. Appeal of this rejection is requested.

Claim 14 depends directly from independent claim 1 and recites additional limitations thereof. For at least the reasons discussed above, Ellis does not teach or suggest Appellants' invention as a whole, as recited in independent claim 1.

MacInnis fails to bridge the substantial gap left by Ellis. MacInnis only teaches a multicast downloading of software and data modules and their compatibility requirements. (See MacInnis, Abstract.) However, MacInnis also

fails to teach or suggest at least the limitations of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows. Accordingly, any attempted combination of Ellis and MacInnis, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because they all lack at least the limitation of encoding, at the headend, the channel information windows, transmitting, from the headend to the set top terminal, the channel information windows, and decoding, at the set top terminal, the broadcast video displays and the channel information windows. As such, Appellants submit that dependent claim 14 is also not obvious and is patentable under 35 U.S.C. §103.

Therefore, Appellants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

Thus, Appellant submits that none of the claims presently in the application are allowable under the provisions of 35 U.S.C. §§102 and 103.

For the reasons advanced above, Appellant respectfully urges that the rejections of claims 1, 2, 5, 7-10, 13 and 14 are improper. Reversal of the rejections of the Final Office Action is respectfully requested.

Respectfully submitted,

2/20/07
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CLAIMS APPENDIX

1. (Previously presented) A method, comprising:
 - generating, at a headend, at least one bitmap for a channel information window;
 - encoding, at the headend, a broadcast video presentation and the bitmap for the channel information window, the broadcast video presentation being programming from one of a plurality of channels;
 - transmitting, from the headend to a set top terminal, the broadcast video presentation and the bitmap for the channel information window;
 - receiving, at the set top terminal, a signal to activate the channel information window;
 - decoding, at the set top terminal, the broadcast video presentation and the bitmap for the channel information window; and
 - compositing, at the set top terminal, the bitmap for the channel information window and the broadcast video presentation to produce a video stream for a display so that the channel information window overlays and obscures at least a portion of the broadcast video presentation on the display.
2. (Original) The method of claim 1, wherein transmitting the bitmap for the channel information window is performed via an out-of-band channel.
- 3-4. (Cancelled).
5. (Previously presented) A method, comprising:
 - generating, at a headend, a plurality of bitmaps for each of a plurality of channel information windows;
 - encoding, at the headend, a plurality of broadcast video displays and the channel information windows, the broadcast video displays including a particular broadcast video display, each broadcast video display being programming from

one of a plurality of channels, the channel information windows including information about the channels;

transmitting, from the headend to the set top terminal, the broadcast video displays and the channel information windows;

decoding, at the set top terminal, the broadcast video displays and the channel information windows;

compositing, at the set top terminal, the particular broadcast video display and an associated one of the channel information windows to produce a video stream for a display so that the channel information window overlays and obscures at least a portion of the particular broadcast video display; and

changing, at the set top terminal, the channel information window in response to a navigation command, while the particular broadcast video display remains the same.

6. (Cancelled)

7. (Previously presented) The method of claim 5, further comprising:

changing the particular broadcast video display to a new broadcast video display, upon termination of the navigation command in that mode;

wherein changing the particular broadcast video display is accomplished by generating, encoding, and transmitting video packet streams at the headend.

8. (Previously presented) The method of claim 5, wherein the navigation command in that mode navigates only through favorite channels.

9. (Previously presented) A method, comprising:

generating, at a headend, a broadcast video presentation and at least one bitmap for a channel information window, the broadcast video presentation being programming from one of a plurality of channels;

encoding, at the headend, the broadcast video presentation and the bitmap for the channel information window;

transmitting, from the headend to a terminal, the broadcast video presentation and the channel information window; and

sending, from the terminal to the headend, a signal to activate the channel information window;

wherein the bitmap for the channel information window is overlaid over the broadcast video presentation so that the channel information window obscures at least a portion of the broadcast video presentation.

10. (Previously presented) A method, comprising:

receiving, at a terminal from a headend, a broadcast video presentation, the broadcast video presentation being programming from one of a plurality of channels;

sending, to the headend from the terminal, a signal to activate a channel information window;

receiving, at the terminal from the headend, a bitmap for the channel information window;

decoding, at the terminal, the broadcast video presentation and the channel information window; and

compositing, at the terminal, the bitmap for the channel information window with the broadcast video presentation to produce a video stream for display so that the channel information window overlays and obscures at least a portion of the broadcast video presentation in the video stream.

11-12. (Cancelled)

13. (Previously presented) The method of claim 1, further comprising:

requesting, by the set top terminal from the headend, the bitmap for the channel information window in response to the signal to activate the channel information window.

14. (Previously presented) The method of claim 1, wherein the bitmap for the channel information window is broadcast continually and the set top terminal causes the channel information window to overlay the broadcast video presentation in response to the signal to activate the channel information window.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None.